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1943

File No. O Wages 43/43

Legal Department

A **BRANCH**

Subject:— Obtaining under the Payment of Wages Act. 1936.

P&E

File No. O Wages 8/43

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C O N T E N T S.

Legal Department File No. O.Wages/1943.

Sr.No.	N.I./O:No.	Subject.	Pages
		Payment of Wages Act, 1936.	
1.	2399 1-4-43	Whether cash payments in excess of the limit upto which credit is allowed would be deductions from wages within the meaning of the Explanation to subsec (1) of sec. 7 of-	1-2
2.	5932 2-9-43	Whether the words "every payment" in Explanation to sec. 7(1) are wide and would include cash payments by employees for goods purchased from employers.	3-10

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Office of the R.L.A.

The Director of Civil Supplies states that most of the Cotton Textile Mills in Bombay City at present run grain shops for their employees and at such shops an employee is allowed credit to purchase essential articles upto a limit of 40 per cent. of his wages or Rs. 22/- per month whichever is less. Under section 3 of the Bombay Rationing Order, 1943, it is proposed to declare such factory shops as authorised retail distributors, and the Mx Millowners' Association has agreed to continue the existing credit facilities. The Director further observes that the purchases of essential articles at such mill grain shops might in future exceed the credit limits and part of the purchases might have to be paid for in cash by the employees. The question for the R.L.A.'s consideration is whether these cash payments in excess of the limit upto which credit is allowed would be deductions from wages within the meaning of the Explanation to sub-section(1) of section 7 of the Payment of Wages Act, 1936.

2. Sub-section (1) of section 7 of the Payment of Wages Act provides that the wages of an employed person shall be paid to him without deductions of any kind except those authorised by or under the Act. Sub-section (2) specifies the authorised or permissible deductions from wages, and among these are deductions for recovery of advances . It has been ascertained from the Director that the cash payments which the employee might have to make for purchases made in excess of the credit limit would not be from any cash advance made by the employer. If it were, the employer would under the provisions of sub-sections (1) and (2) of section 7 be entitled to de-duct the same from the wages of the employee. The Explanation to sub-section (1) proceeds to lay down that the payment w made

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by the employed person to the employer or his agent shall, for the purposes of the Act, be deemed to be a deduction from wages. It is not clear why this Explanation was inserted. But on a reference to the debates on the Bill it would appear that its main object was to check the practice of compelling the weavers either to take spoilt cloth in lieu of wages or to pay sum compensation for it. The Explanation contemplates payment by an employee to his employer on account of anything arising out of his employment such as compensation for spoilt cloth etc., and such payment not being a deduction from wages could not have ordinarily been recovered under the provisions of sub-section (2), it being in the nature of a recovery from the employee. In the present case, however, a cash payment made by an employee for purchasing articles from a grain shop in excess of the limit upto which credit is allowed does not ~~xxxxxxxxxx~~ come from any advance paid by the employer and does not involve any direct or indirect deduction from wages. His cash purchases at the grain shop in excess of the credit limit have really no connection with the payment of his wages and the employer is in no way concerned. Consequently the Explanation to sub-section (1) will have no application.

Sd/-P.N.Menon
1-4

O.C. Remembrancer of Legal Affairs.

U.R. to F.D.(Supply), No. 2399, dated the 1st April 194

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Office of the R.L.A.

The Commissioner of Labour appears to hold that the words "every payment" in Explanation to section 7(1) of the Payment of Wages Act, 1936, are very wide and would include cash payments by employees for goods purchased from employers. The R.L.A. is therefore requested to reconsider his opinion No. 2399 dated 1-4-43.

2. Where the employee is paid the full amount of his wages without any ~~without any~~ direct deduction and he purchases from the employer employer's shop food grains etc. on payment of cash, no question of any deduction arises. It is true that the Explanation to sub-section (1) of section 7 is widely worded, but it has to be so construed as not to lead to any absurd result. Unless a limit is put on the words of the Explanation every payment made by the employee and unknown to the employer, for instance, payment for a seat in a cinema owned by the employer, would also be caught by the Explanation. This can hardly be the intention of the Legislature. "The true meaning of any passage is to be found not merely in the words of that passage, but in comparing it with other parts of the law, ascertaining also what were the circumstances with reference to which the words were used and what was the object appearing from those circumstances which the Legislature had in view." (See Maxwell at page 20). The objection of the Payment of Wages Act as stated in the preamble is to regulate payment of wages and not other dealings between the employer and employee which have no bearing direct or indirect on the employment. The definition of "Wages" in section 2(6) of the Act is also confined to "employment or work done in such employment". The Explanation to section 7(1) can therefore be properly construed and excluding

DRAFT NOTIFICATION.

In pursuance of clause (e) of sub-section (2) of section 7, read with section 11, of the payment of Wages Act, 1936 (IV of 1936) and in supersession of Government Orders in the Political and Services Department specified in the margin, the Government of Bombay is pleased to authorise, subject to the following conditions, the supply by an employer to his employees of foilgrains, cloth, kerosene and other articles commonly used by them from a grain-shop or store operated by him for their private use and at their will as an amenity for which deductions from the wages of such persons may be made, namely:-

1) The employer shall not charge any rent for the shop or store.

2) The shop or store shall not be conducted for the purpo-se of profit.

3) The selling prices of all articles shall be displayed in a conspicuous place in the sopp or store.

4) The shop or store shall always be kept in a clean condition.

5) An Inspector shall be given a right of entry and of inspection of the articles, records and premises and a right to take samples of the articles kept in the shop or store.

By order of the Governor of Bombay.

Chief Secretary to Government.

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payments not relating to employment or work done in such an employment. Such construction is in harmony with the position obtaining in English law, namely under the Truck Act, 1831 (sections 3,5 and 6) and the Truck Act, 1887 (sections 5 and 6) which permit cash transactions between employer and employee when unconnected with the employment. H.L.A.'s opinion No. 2399 dated 1-4-43 does not therefore need any modification.

Where the employer supplies to the employee foodgrains etc. from his shop on credit and before making payment of wages due to the employee deducts therefrom the amount due to himself on account of the foodgrains etc. supplied, that would be a direct deduction within the meaning of section 7(1) of the Act. It would therefore be necessary if such deductions are to be permitted to issue the notifications as proposed by the Commissioner of Labour on page 19 ante. Revised draft notifications are sent herewith. (Cf. Government of India, Labour Department Notification No. 13070 dated the 26th May 1942).

Id/-P.N.Hoon
1-9

Remembrancer of Legal Affairs.

U.R. to P. & S.D. .No. 5932, dated the 2nd September 1943.

D.S. Before issue Id/- N.K.D. 2-9
A.L.R. ---"--- Id/-R.S.H. 2-9
S.A.S. ---"----- Id/-R.T.H. 2-9
P.A. ----"---- Id/-S.E.C. 1-9

The words "the value of " in the draft notification seem inapt and redundant. These words are presumably taken from sec. 2(vi)(a) of the payment of wages Act, but there they have been rightly used to signify something.

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signify something capable of expression in terms of money and also to cover rents, rates, charges and fees for amenities supplied. Here however "the value of the difference in price" means in effect "the difference in price." If the words are not really necessary D.S. may consider their deletion.

I have deleted them

Id/-H.K.D.
2-9

Id/-P.N.Moos
1-9

S.A.K.
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DRAFT NOTIFICATION.

For the purpose of paragraph (a) of clause (vi) of section 2 of the Payment of Wages Act, 1936 (IV of 1936) and in supersession of Government Orders in the Kolis Political and Services Department , specified in the margin, the Government of Bombay is pleased to exclude, in the case of all factories situated in the Province of Bombay, the difference between the price paid by employees to their employer for foodgrains , cloth, kerosene and other articles commonly used by them and the market price of such articles from the definition of the said term 'wages'

Here specify the orders.

By order of the Governor of Bombay.

Chief Secretary to Government.

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